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HAROLD B. WILLEY,

IN

Supreme Court of the United States

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,
Appellant,

vs.

WILLIAM RICHARDSON,
Appellee.

Appeal From Supreme Court of The State of Georgia

SECOND PETITION OF G. SEALS AIKEN FOR REHEARING OF ORDER OF NOVEMBER 9, 1953, DISMISSING HIS APPEAL "FOR WANT OF SUBSTANTIAL FEDERAL QUESTION"

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Now comes G. Seals Aiken, the Petitioner above named, and presents this his second Petition for a Rehearing of the order of this Honorable Court of November 9, 1953, dismissing his appeal from the decision and judgment of the Supreme Court of Georgia of May 12, 1953 (*Aiken* v. *Richardson*, 209 Ga. 837, 76 S. E. 2nd 393), and prays that the said order be reversed and jurisdiction be noted of this cause for hearing as required by Section I of the Fourteenth Amendment of the U. S. Constitution, the Rules of this Court, and U. S. Code Annotated, Title 28, Section 1257, and as requested in Petitioner's Appeal and Statement as to Jurisdiction.

This Court dismissed Petitioner's Appeal "for want of substantial federal question." IT IS FIRMLY BELIEVED THAT PETITIONER'S APPEAL WAS DISMISSED BY THIS COURT *THROUGH INADVERTENCE* BECAUSE IT PRESENTS, BEYOND ANY QUESTION OR DOUBT, SUBSTANTIAL FEDERAL QUESTIONS BRINGING THE CASE CLEARLY WITHIN THE MANDATORY AND CONSTITUTIONAL JURISDICTION OF THIS COURT, AND REQUIRES A REVERSAL OF THE DECISION OF THE SUPREME COURT OF GEORGIA OF MAY 12, 1953, AS A MATTER OF ABSOLUTE FEDERAL CONSTITUTIONAL RIGHT, FOR THE REASONS SET FORTH BRIEFLY BUT POINTEDLY BELOW.

1. THE CONSTITUTION of the United States NO LONGER EXISTS for the benefit and protection of the liberty and property of a natural-born, life-long, and law-abiding citizen of the United States UNDER THE DECISION OF THIS HONORABLE COURT OF NOVEMBER 9, 1953, dismissing Petitioner's Appeal "for want of substantial federal question."

2. Under the decision of this Court of November 9, 1953, IT IS NOW THE LAW OF THE LAND, FOR THE FIRST TIME IN THE HISTORY OF THIS COUNTRY, THAT ANY CITIZEN CAN BE ACCUSED, CONVICTED, AND SENTENCED BY ANY STATE OR FEDERAL COURT JUDGE AS AN EMBEZZLER, A FORGER, A PERJURER, A FALSE SWEARER, A CHEAT, AND A SWINDLER, WITHOUT A TRIAL AND WITHOUT ANY EVIDENCE, AND WITHOUT ANY OPPORTUNITY TO PRESENT ANY EVIDENCE IN HIS OWN BEHALF, AND CAN BE DEPRIVED IN SAID MANNER OF HIS PROPERTY, INCLUDING HIS GOOD NAME AND REPUTATION AND HIS ONLY MEANS OF A LIVELIHOOD, AND OF HIS LIBERTY.

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3. All of that stated in paragraph 2 above has been done to Appellant in this case despite the fact that *Judge Townsend* (in his special concurrence in the decision of the Court of Appeals of Georgia (*Aiken* v. *Richardson*, 85 Ga. App. 180, 68 S. E. 2nd 288), affirming the "Arbitrary Edict" convicting Appellant of, and sentencing him for, said serious crimes without a trial and without any evidence) *called attention to the attacks levied against the professional integrity of Appellant* in the pleadings of Appellee and in the briefs of his counsel in this PENAL proceeding in both the Superior and Appellate Courts of Georgia, *and stated* that in justice to Appellant, *he, Judge Townsend, desired to make it clear that said attacks made upon the character of Appellant were unwarranted, and that* if the order of Judge Andrews sustaining Appellee's Motion to Strike Appellant's answer on the ground it was evasive had been the subject of review, *it was his "personal opinion"* that it would have been the duty of the Court to find *that Judge Andrews had abused his discretion in holding the answer so evasive as to require its dismissal.*

4. The great decision of this Court in the *Milligan* Case, 71 U. S. 281, that:

> "No graver question was ever considered by this Court, nor one which more nearly concerns the rights of the WHOLE PEOPLE; FOR IT IS THE BIRTHRIGHT OF EVERY AMERICAN CITIZEN WHEN CHARGED WITH CRIME, TO BE TRIED and punished ACCORDING TO LAW."

would be relegated by the decision of November 9th in the case at bar to the same low status of the Belgian Peace Treaty in the hands of the Germans, namely that of a MERE SCRAP OF PAPER TO BE IGNORED OR VIOLATED AT WILL BY THIS OR ANY OTHER COURT. To say that such action as that described in paragraph 2 of this petition, by any Judge or Court to any citizen in

this Country in this enlightened age does not present a substantial Federal question would make "black, white; foul, fair; wrong, right; base, noble; old, young; coward, valiant," and is therefore utterly inconceivable.

5. THE CONSTITUTION of the United States, UNDER THE DECISION OF THIS COURT OF NOVEMBER 9, 1953, WOULD ONLY AMOUNT TO A RELIC TO BE VIEWED BY CITIZENS OF THE UNITED STATES HEREAFTER IN THE BUREAU OF ARCHIVES AT WASHINGTON, D. C., AS EVIDENCE OF THE PAST GREATNESS OF THE UNITED STATES OF AMERICA resulting from the conception, adoption, and practice of the principle in the Constitution that no man can be deprived of his life, liberty, or property without due process of law, which has been defined heretofore by this Court as follows:

> "A person's right to reasonable notice of a charge against him, AND AN OPPORTUNITY TO BE HEARD IN HIS DEFENSE—A RIGHT TO HIS DAY IN COURT—ARE BASIC IN OUR SYSTEM OF JURISPRUDENCE; AND THESE RIGHTS INCLUDE, AS A MINIMUM, A RIGHT TO EXAMINE THE WITNESSES AGAINST HIM, TO OFFER TESTIMONY, AND TO BE REPRESENTED BY COUNSEL." (*IN RE: OLIVER*, 333 U. S. 257, 68 S. Ct. 499.)

6. Under the decision of this Court of November 9, 1953, as rendered under the circumstances shown by the record in this case and the Appeal papers of Petitioner, it is no longer the law of the land (as stated by Daniel Webster in the Dartmouth College Case and as held by this Court in *Hovey* v. *Elliott*, 167 U. S. 409) that:

> "By the law of the land is most clearly intended the general law; A LAW WHICH HEARS BEFORE IT CONDEMNS, WHICH PROCEEDS UPON IN-

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QUIRY, AND RENDERS JUDGMENT ONLY AFTER TRIAL. THE MEANING IS THAT EVERY CITIZEN SHALL HOLD HIS LIFE, LIBERTY, PROPERTY AND IMMUNITIES UNDER THE PROTECTION OF THE GENERAL RULES WHICH GOVERN SOCIETY."

7. Under the decision of this Court of November 9, 1953, it is no longer the law (as held in *Hovey* v. *Elliott*, supra) "that the judicial department of the government is, in the nature of things, necessarily governed in the exercise of its functions by the rule of due process of law," and that the definition of due process given in the next preceding paragraph "is apt and suitable as applied to judicial proceedings, which cannot be valid unless they 'proceed upon inquiry,' and 'render judgment only after trial.' "

8. Under the decision of this Court of November 9, 1953, "the power to violate the fundamental constitutional safeguards securing property" and liberty "exists" in all the State and Federal Courts of the United States and they "may be with impunity set aside by courts on the theory that they do not apply to proceedings" in a PENAL Money Rule case, despite the decision of this Court to the contrary in *Hovey* v. *Elliott*, supra.

9. According to the decision of this Court in *Hovey* v. *Elliott*, supra, ITS DECISION OF NOVEMBER 9, 1953, IN THIS CASE "WOULD CONVERT THE JUDICIAL DEPARTMENT OF THE GOVERNMENT INTO AN ENGINE OF OPPRESSION, AND WOULD MAKE IT DESTROY GREAT CONSTITUTIONAL SAFEGUARDS."

10. Under the decision of this Court of November 9, 1953, it is now the law that any judge of any State or Federal Court in the country may, in a PENAL Money Rule Proceeding, summons a person "to appear and speak,

if he has anything to say," "why the judgment sought should not be rendered," and then, upon the appearance of said party, say to him, "*your appearance shall not be recognized, and you shall not be heard,*" *and then enter "a decree of condemnation, reciting that the default of" said party "had been duly entered,"* despite the prior decision of this Court to the contrary in *Hovey* v. *Elliott*, supra.

11. Under the decision of this Court of November 9, 1953, it is now the law of Georgia that the Statute of this State known as Georgia Code Section 24-210 is not repugnant to or violative of Section I of the Fourteenth Amendment of the U. S. Constitution as construed and applied to Petitioner to authorize a Judge of a State Superior Court of Georgia, *in his discretion and without evidence or trial,* to determine whether the respondent in a PENAL Money Rule has fully responded and to find the answer to be vague, indefinite, and evasive, even though it contains issuable facts and shows reasons why a rule absolute should not be issued, and to be stricken for evasiveness, and to render a PENAL Rule Absolute against the respondent, under said circumstances, WITHOUT EVIDENCE AND WITHOUT A TRIAL, and even though the answer of the respondent has been traversed by the movent of the rule, and even though said Statute itself provides that where the respondent's answer is traversed, the issue thus formed must be tried by a jury, and "upon the trial of such issue the court shall discharge the rule, or make the same absolute, ACCORDING AS THE VERDICT MAY BE FOR OR AGAINST THE OFFICER."

12. Under the decision of this Court of November 9, 1953, it is now the law of Georgia that the Statute of this State known as Georgia Code Section 24-206 is not repugnant to or violative of Section I of the Fourteenth Amendment of the U. S. Constitution as construed and applied to Petitioner in this case to permit the arbitrary

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striking of his answer in a PENAL Money Rule Case denying guilt and all the charges made in said proceeding and showing he had paid the exact amount due by him under the contract of settlement involved, and to permit the entering of a PENAL Rule Absolute against him for $2,189.38 *with twenty per cent penalty per annum thereon from May 23, 1949,* (totaling to date over $4,000.00), *until paid,* and all costs, WITHOUT ANY OPPORTUNITY TO APPELLANT TO PRESENT ANY EVIDENCE IN HIS OWN BEHALF, WITHOUT A TRIAL, AND SUBJECTING APPELLANT TO BEING INCARCERATED IN JAIL AND DISBARRED UPON HIS FAILURE TO COMPLY WITH SAID PENAL RULE ABSOLUTE ENTERED UNDER SAID ARBITRARY CIRCUMSTANCES.

13. Under the decision of this Court of November 9, 1953, it is now the law of this land that it is not a denial of due process of law or of equal protection of the law for any State Superior Court Judge of Georgia to refuse to grant a statutory motion to set aside, as void for want of jurisdiction and as a denial of due process of law and of equal protection of the law, a PENAL Rule Absolute entered against a person in a PENAL Money Rule Proceeding by another Superior Court Judge, WITHOUT A TRIAL, WITHOUT ANY EVIDENCE, AND WITHOUT ANY OPPORTUNITY TO THE RESPONDENT IN SAID *PENAL* PROCEEDING TO PRESENT ANY EVIDENCE IN HIS OWN BEHALF, AFTER ARBITRARILY STRIKING THE SWORN ANSWER OF SAID RESPONDENT DENYING THE CHARGES IN SAID PENAL RULE, and after his said answer was traversed, and without any trial whatever of the issues formed by said traverse.

14. Under the decision of this Court of November 9, 1953, it is now the law that a PENAL Rule Absolute entered by a State Superior Court Judge of Georgia against a

respondent in a PENAL Money Rule Proceeding, WITHOUT A TRIAL, WITHOUT ANY EVIDENCE, AND WITHOUT ANY OPPORTUNITY TO THE RESPONDENT TO PRESENT ANY EVIDENCE IN HIS OWN BEHALF, IS RES ADJUDICATA AFTER IT HAS BEEN AFFIRMED BY THE STATE COURT OF APPEALS OF GEORGIA, EVEN THOUGH THE APPLICABLE AND CONTROLLING DECISIONS OF THE SUPREME COURT OF GEORGIA (THE HIGHEST COURT OF SAID STATE) HOLD THAT SUCH A JUDGMENT IN SUCH A PROCEEDING DOES NOT STAND IN THE SAME CATEGORY AS OTHER CASES, AND IS NEVER RES ADJUDICATA BUT IS ALWAYS OPEN FOR THE PURPOSE OF INVESTIGATION UPON A PROPER CASE MADE, AND THAT THE COURT MUST NECESSARILY, IN A PROPER CASE, GO BEHIND SUCH A RULE ABSOLUTE OR PREVIOUS ADJUDICATION AND EXAMINE THE FULL AND COMPLETE TRUTH OF THE CASE AND RENDER JUDGMENT ACCORDINGLY.

15. Under the decision of this Court of November 9, 1953, THIS COURT CAN UTTERLY IGNORE OR FAIL OR REFUSE TO FOLLOW, WITHOUT REVERSING, THE PRIOR APPLICABLE AND CONTROLLING DECISION OF THIS COURT IN *HOVEY* V. *ELLIOTT*, SUPRA, holding that a PENAL Rule Absolute entered against a respondent in a PENAL Money Rule proceeding, without a trial and without any evidence, is a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, and is therefore void for want of jurisdiction and not entitled to any respect in any judicial tribunal.

16. Under the decision of this Court of November 9, 1953, it is no longer the law, as held by the Supreme Court of Georgia in *Crumm* v. *State*, 205 Ga. 547, 54 S. E. 2nd

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639, that, "A construction of a clause of the U. S. Constitution having been invoked, the interpretation given thereto by the U. S. Supreme Court becomes binding upon this court."

17. Under the decision of this Court of November 9, 1953, it is now the law of Georgia that a State Superior Court Judge as well as the Supreme Court of Georgia can legally deny a motion to set aside a PENAL Rule Absolute entered against a respondent in a PENAL Money Rule case, without a trial and without any evidence, even though the said motion to set aside is specifically authorized by statutes of Georgia and is supported by uncontradicted evidence (Remittance to Richardson of $1,591.33 (R. 23); Richardson's own deposition that he understood, at and before the time of settlement, he would receive "about $1,600.00" (R. 92-3)) showing all of the charges in the PENAL Money Rule proceeding were false, and that there was no basis in fact or in law for such a proceeding or a PENAL Rule Absolute.

18. Under the decision of this Court of November 9, 1953, ANY STATE OR FEDERAL JUDGE "IN THIS COUNTRY IS SO HIGH THAT HE IS ABOVE THE LAW" AND "HE MAY SET THAT LAW AT DEFIANCE WITH IMPUNITY," regardless of the prohibitions against such in the U. S. Constitution and the prior applicable and controlling decisions of the U. S. Supreme Court pursuant thereto, especially in the case of *U. S.* v. *Lee*, 106 U. S. 196, 1 S. Ct. at page 261, holding as follows:

> "NO MAN IN THIS COUNTRY IS SO HIGH THAT HE IS ABOVE THE LAW. NO OFFICER OF THE LAW MAY SET THAT LAW AT DEFIANCE WITH IMPUNITY. ALL THE OFFICERS OF THE GOVERNMENT FROM THE HIGHEST TO THE LOWEST, ARE CREATURES OF THE LAW AND ARE BOUND TO OBEY IT. IT IS THE

ONLY SUPREME POWER IN OUR SYSTEM OF GOVERNMENT, AND EVERY MAN WHO BY ACCEPTING OFFICE PARTICIPATES IN ITS FUNCTIONS IS ONLY THE MORE STRONGLY BOUND TO SUBMIT TO THAT SUPREMACY, AND TO OBSERVE THE LIMITATIONS WHICH IT IMPOSES UPON THE EXERCISE OF THE AUTHORITY WHICH IT GIVES."

19. Under the decision of this Court of November 9, 1953, it is now the law of the land that a State Statute fair on its face does not afford any protection whatever against action of a State through its courts in construing and applying it to deprive a person of his property and liberty without due process of law or equal protection of the law in violation of the Fourteenth Amendment of the U. S. Constitution.

20. Under the decision of this Court of November 9, 1953, the following statement of Honorable Robert H. Jackson, Associate Justice of this Honorable Court, on November 2, 1953, at the dedication of the American Bar Association Center in Chicago (of which Association Petitioner has been a member in good standing for many years), is utterly meaningless and can be ignored by every court in the land:

"We believe it a duty to champion all fundamental rights under the law, BUT WE RECOGNIZE A SPECIAL TRUST AND COMPETENCE TO SAFEGUARD EVERY MAN'S RIGHT TO FAIR TRIAL, ON WHICH EVERY OTHER RIGHT IS DEPENDENT. We cannot approve any use of official powers or position to prejudice, injure, or condemn a person in liberty, property or good name which does not inform him of the source and substance of the charge AND GIVE A TIMELY AND OPEN-MINDED HEARING AS TO ITS TRUTH, SAFEGUARDS WITHOUT WHICH NO JUDGMENT CAN HAVE A SOUND FOUNDATION."

21. Under the decision of this Court of November 9, 1953, "free counsel" so "indispensable to a fair and full administration of justice," (*Mitchum* v. *State of Georgia*, 11 Ga. at page 633), no longer exists, and every lawyer in the country is now subject to be ruled, deprived of his property (including his good name and reputation and his profession), and of his liberty, without a trial and without any evidence, in the arbitrary discretion of any State or Federal Court Judge, at the instance of anyone, and though entirely innocent of any wrongdoing whatsoever.

22. Under the decision of this Court of November 9, 1953, every citizen of the United States who is a lawyer holds his "means of living, or any material right essential to the enjoyment of life, at the mere will of another" (any State or Federal Judge who may desire to enter a PENAL Rule Absolute against him and deprive him of his property, including his good name and reputation and his profession, and of his liberty, without a trial and without any evidence), *and any such judge may apply to every such citizen any statute*, even though fair on its face, *"with an evil eye and an unequal hand,"* in utter disregard of the applicable and controlling decision of this Court in *Yick Wo* v. *Hopkins*, 118 U. S. 356, *and no natural-born, life-long, and law-abiding citizen of the United States has as much right or protection under the law of his own country as a Chinaman.*

23. Under the decision of this Court of November 9, 1953, any State legislature can now enact and enforce any statute which declares a citizen presumptively guilty of any crimes charged against him and which therefore creates a presumption that is arbitrary and operates to deny a fair or any opportunity to repel it, despite the applicable and controlling decisions of this Court to the contrary in the cases of *Manley* v. *State of Georgia*, 279 U. S. 1; and *Western & Atlantic Railroad* v. *Henderson*, 279 U. S. 639.

24. Under the decision of this Court of November 9, 1953, the government of the United States is now a government of PERSONS and not of LAWS, despite the decision of this Court to the contrary in *U. S.* v. *Dixon*, 40 U. S. 141, and in all decisions rendered by it on this point prior to its decision of November 9, 1953, in the case at bar.

Petitioner has been a member of the Bar of this Court for over eighteen years. As an officer of this Court, it is his duty to uphold the honor, dignity, and purity of the Court. It is also the duty of the Court to protect him in the legal discharge of his duties and responsibilities and in the exercise of his prerogatives in said capacity. According to the Canons of Professional Ethics of the American Bar Association:

> "The lawyer owes 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,' *to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor* or public unpopularity *should restrain him from the full discharge of his duty.* In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. BUT IT IS STEADFASTLY TO BE BORNE IN MIND THAT THE GREAT TRUST OF THE LAWYER IS TO BE PERFORMED WITHIN AND NOT WITHOUT THE BOUNDS OF THE LAW. THE OFFICE OF ATTORNEY DOES NOT PERMIT, MUCH LESS DOES IT DEMAND OF HIM FOR ANY CLIENT, VIOLATION OF LAW OR ANY MANNER OF FRAUD OR CHICANE. He must obey his own conscience and not that of his client.
>
> ". . . A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, par-

ticularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing, the lawyer should terminate their relation."

The Canons of Judicial Ethics of the American Bar Association provide in part:

"IT IS THE DUTY OF ALL JUDGES IN THE UNITED STATES TO SUPPORT THE FEDERAL CONSTITUTION AND THAT OF THE STATE WHOSE LAWS THEY ADMINISTER; IN SO DOING, THEY SHOULD FEARLESSLY OBSERVE AND APPLY FUNDAMENTAL LIMITATIONS AND GUARANTEES."

"He (the judge) should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts."

"In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; HE SHOULD ADMINISTER JUSTICE ACCORDING TO LAW, and deal with his appointments as a public trust . . ."

"Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I will hear it." Deuteronomy, I, 16-17.

As stated by the Supreme Court of Georgia in *Garrison* v. *Wilcoxson*, 11 Ga. 159, lawyers,

". . . are officers of the court—amenable to its au-

thority, subject to its correction, and restrained by usages of honor and courtesy, which, however, in some instances disregarded, ARE AS ANCIENT IN THEIR ORIGIN AND AS POTENT FOR GOOD, AND AS GENERALLY RESPECTED, AS ANY USAGES WHICH BELONG TO ANY CLASS OF THE HIGHEST GRADE OF CIVILIZED MAN. THE DUTIES OF THE ADVOCATE ARE AMONG THE MOST ELEVATED FUNCTIONS OF HUMANITY."

As stated by the Supreme Court of Georgia in *Moody & Wife* v. *Davis*, 10 Ga. at 410:

"As officers of the Court, the duties of counsel are not in conflict with those which devolve upon him as the representative of a party. They are the friends of the court, enlisted with him in the sublime work of discovering truth, and dealing out justice between man and man. . . The mandate restrains the Judge from going beyond or outside of the law, and enjoins him to enforce the law. He shall in his discretion make no new laws, and he shall, without discretion, give effect to the laws that are of force. . . It is the duty of the Judge to enforce the laws of the State, made in accordance with the State and Federal Constitutions—THE WHOLE LAW, as it applies, in his judgment, to the cases which come before him. . . HE HAS NO RIGHT AND NO POWER TO WITHHOLD THE APPLICATION OF ONE SINGLE PRINCIPLE OF LAW, TO A SINGLE CASE OVER WHICH HE HAS JURISDICTION; HE HAS NO DISPENSATION, JUSTIFYING OR EXCUSING AN OMISSION TO APPLY THE LAW. . ."

"Whilst judgment belongs alone to the Judge—enlightenment is the province of the lawyer, and I apprehend that no Judge can be found so presumptuously vain, or so flagrantly unjust, as not to recognize, and that too with grateful emotions, the aid which he derives, in the discharge of duties more solemn than belong to any other functionary, from an able bar."

As stated by the Supreme Court of Georgia, speaking through the late noted Mr. Justice Nisbet, in the case of *Mitchum* v. *State*, 11 Ga. at page 630:

> ". . . it is the duty of counsel to guard, by the most scrupulous propriety of demeanor, in the conduct of a cause, THE DIGNITY AND HONOR OF THE PROFESSION. Connected as it is, most intimately, with the administration of justice, *it should be protected most vigilantly from falling into popular disrepute. It ought*, as I verily believe it does, *to command the respect of the wise, and the reverence of the good.*"

According to the American Bar Association Journal of December, 1953, Mr. Justice Burton of this Court in a recent address before the Judicial Conference of the Third Judicial Circuit, said when young people ask him "WHAT THE SUPREME COURT IS FOR," he tells them that the courts are like umpires in a baseball game and that "The laws are the rules." He stated that baseball players do not expect the umpire to be perfect but that they do "EXPECT THE UMPIRE TO KNOW THE RULES, TO BE HONEST, TO APPLY THE RULES. . ." In conclusion, he said:

> "There is ground to believe that both the American people and their Senators expect from their COURTS, NO LESS THAN FROM THEIR BASEBALL UMPIRES, HONEST, INFORMED AND INDEPENDENT JUDGMENTS, REGARDLESS OF WHOM THE DECISIONS MAY DISAPPOINT.
>
> "Our legal profession owes no more sacred obligation than to justify such a faith in the integrity and independence of the judiciary."

A MERE CURSORY EXAMINATION OF THE RECORD AND APPEAL PAPERS IN THIS CASE WILL SHOW, WITHOUT ANY DOUBT WHATEVER, THAT

"THE LAWS" (WHICH "ARE THE RULES") APPLICABLE TO *THIS CASE WERE NOT APPLIED* BY THIS COURT IN DISMISSING APPELLANT'S APPEAL, OR BY ANY OF THE STATE COURTS INVOLVED.

This high court, in the performance of its sacred constitutional duty in this case, is in a position similar to that occupied by it in the *Merryman* Case, in which it stated in the words of the great Chief Justice Taney:

> "The Constitution provides . . . that 'no person shall be deprived of life, liberty or property, without due process of law.' . . ."
>
> "And THESE GREAT AND FUNDAMENTAL LAWS, WHICH CONGRESS ITSELF COULD NOT SUSPEND, HAVE BEEN DISREGARDED, AND SUSPENDED, like the Writ of Habeas Corpus, by a Military order, supported by force of arms. Such is the case now before me, and I can only say, that IF THE AUTHORITY WHICH THE CONSTITUTION HAS CONFIDED TO THE JUDICIARY DEPARTMENT AND JUDICIAL OFFICERS MAY THUS, UPON ANY PRETEXT OR UNDER ANY CIRCUMSTANCES, BE USURPED by the military power at its discretion, the PEOPLE OF THE UNITED STATES ARE NO LONGER LIVING UNDER A GOVERNMENT OF LAWS, BUT EVERY CITIZEN HOLDS LIFE, LIBERTY, AND PROPERTY AT THE WILL AND PLEASURE OF THE ARMY OFFICER IN WHOSE MILITARY DISTRICT HE MAY HAPPEN TO BE FOUND.
>
> "IN SUCH A CASE MY DUTY WAS TOO PLAIN TO BE MISTAKEN. I HAVE EXERCISED ALL THE POWER WHICH THE CONSTITUTION AND LAWS CONFER UPON ME, BUT THAT POWER HAS BEEN RESISTED BY A FORCE TOO STRONG FOR ME TO OVERCOME. IT IS POSSIBLE THAT THE OFFICER WHO HAS IN-

> CURRED THIS GRAVE RESPONSIBILITY MAY HAVE MISUNDERSTOOD HIS INSTRUCTIONS AND EXCEEDED THE AUTHORITY INTENDED TO BE GIVEN HIM. I shall, therefore, order all the proceedings in this case, with my opinion, to be filed and recorded in the Circuit Court of the United States for the District of Maryland, and direct the Clerk to transmit a copy, under seal, to the PRESIDENT OF THE UNITED STATES. IT WILL THEN REMAIN FOR THAT HIGH OFFICER, IN FULFILLMENT OF HIS CONSTITUTIONAL OBLIGATION, TO 'TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED,' TO DETERMINE WHAT MEASURES HE WILL TAKE TO CAUSE THE CIVIL PROCESS OF THE UNITED STATES TO BE RESPECTED AND ENFORCED."

In the case at bar "THESE GREAT AND FUNDAMENTAL LAWS, WHICH CONGRESS ITSELF COULD NOT SUSPEND, HAVE BEEN DISREGARDED" by this Honorable Court in its decision of Nov. 9, 1953, dismissing Appellant's appeal "for want of substantial Federal question"; by the State Superior Court Judge who entered the "ARBITRARY EDICT" in question against Appellant without a trial and without any evidence, in a PENAL case; and by every State Judge who has upheld it. In this case this Court's "DUTY" IS "TOO PLAIN TO BE MISTAKEN," and IT HAS NOT "EXERCISED ALL THE POWER WHICH THE CONSTITUTION AND LAWS CONFER UPON" IT, AND IT HAS NOT "BEEN RESISTED BY A FORCE TOO STRONG FOR" IT "TO OVERCOME." UNDER THE EXPRESS PROVISIONS OF THE CONSTITUTION AND THE APPLICABLE DECISIONS OF THIS COURT PURSUANT THERETO, IT NOT ONLY HAS AMPLE POWER BUT IS ALSO CLOTHED WITH THE MANDATORY DUTY UNDER THE FACTS AND CIRCUMSTANCES IN THIS CASE, AS SHOWN BY THE RECORD AND THE APPEAL PAPERS, TO NOTE JURISDICTION OF

THIS APPEAL AND, AFTER A HEARING, TO REVERSE THE DECISION OF THE SUPREME COURT OF GEORGIA OF MAY 12, 1953, AFFIRMING SAID "ARBITRARY EDICT." THERE IS NO FORCE RESTRAINING THIS HONORABLE COURT FROM PERFORMING ITS SAID MANDATORY CONSTITUTIONAL DUTY. TO USE THE LANGUAGE OF THIS COURT IN EX PARTE MILLIGAN, SUPRA, THE PROVISIONS OF THE CONSTITUTION AND THE DECISIONS OF THIS COURT PURSUANT THERETO REQUIRING THE NOTING OF JURISDICTION AND REVERSAL OF THE DECISION APPEALED FROM ARE "EXPRESSED IN SUCH PLAIN ENGLISH WORDS, THAT IT WOULD SEEM THE INGENUITY OF MAN COULD NOT EVADE THEM."

The record and appeal papers in this case show that Appellant has performed his duties as an able and honorable lawyer and as a loyal and vigilant American citizen, and it now remains for this Honorable Court to fulfill its "CONSTITUTIONAL OBLIGATION" by noting jurisdiction of this appeal and reversing the decision of the Supreme Court of Georgia appealed from, and thereby removing forever the "blot upon our jurisprudence and civilization" caused by the "arbitrary edict" entered against Appellant under the circumstances shown.

Petitioner, therefore, deems it to be his sacred duty as a lawyer, as an officer of this Court, and as a good American citizen, to respectfully call the Court's attention to the foregoing serious consequences which will result to the entire country if jurisdiction is not noted in this case, and the decision of this Court of November 9, 1953, is not reversed. In the language of this Court in *Hovey* v. *Elliott*, Supra, Petitioner deems it his duty to do all in his legal and proper power to prevent this erroneous, unprecedented, and uncon-

stitutional decision in a matter of such grave and public concern from becoming final and conclusive and therefore a permanent "BLOT UPON OUR JURISPRUDENCE AND CIVILIZATION."

In conclusion, Appellant can truthfully say in the words of St. Paul:

> "I am now ready to be offered" for my Lord and Country.
>
> "I have fought a good fight . . . I have kept the faith;
>
> "Henceforth there is laid up for me a crown of righteousness, which the Lord, the righteous judge, shall give me at that day: and not to me only, but unto all them that love his appearing." (II Tim. 4:6-8.)

After all, the Lord did not have a trial but His false accusers were nevertheless, allowed by a Roman Judge, Pilate, to crucify Him, despite the statement of said faithless Judge, "I am innocent of the blood of this just person." That was allowed by God to be done that our sins might be forgiven and we might have eternal life. Our Lord, therefore, "humbled Himself, and became obedient unto death, even the death of the cross." Appellant's years of toil and sacrifice in this righteous, patriotic, and constitutional cause is insignificant in comparison with that of the Lord, but Appellant hopes and prays they will not be in vain; firmly believing and confidently relying upon the following words of the Scripture:

> ". . . be ye steadfast, unmoveable, always abounding in the work of the Lord, forasmuch as ye know that your labor is not in vain in the Lord." (I Cor. 15:58.)
>
> "For God shall bring every work into judgment, with every secret thing, whether it be good, or whether it be evil." (Ec. 12:14.)

"For there is nothing covered that shall not be revealed, neither hid that shall not be known." (Luke 12:2.)

"In the day when God shall judge the secrets of men by Jesus Christ according to my gospel." (Ro. 2:16.)

If Nathan Hale could gladly give his life for his country with the only regret that he had but one life to so give, Appellant, with God's help, can sacrifice, if necessary, his liberty and property, without a trial and without any evidence, for the same great cause—The United States of America under the Declaration of Independence and the Constitution.

Respectfully submitted,

BEN F. SWEET,
F. L. BREEN,
Of counsel.

G. SEALS AIKEN,
In Propria Persona

CERTIFICATE

I, G. Seals Aiken, Petitioner above named, do hereby certify that the foregoing Petition is presented in good faith and not for the purpose of delay.

G. SEALS AIKEN.

ACKNOWLEDGMENT OF SERVICE

Service of the foregoing Petition for Rehearing is hereby acknowledged and copy received.

This the .... day of December, 1953.

.....

Counsel for William Richardson, Appellee.

BLEED THROUGH POOR COPY